

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BILLY M. SMITH,

Plaintiff,

:

Case No. 3:10-cv-448

-vs-

:

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

MONTGOMERY COUNTY
SHERIFF'S OFFICE, et al.,

Defendants.

DECISION AND ORDER DENYING MOTIONS TO COMPEL

This case is before the Court on Plaintiff's Motions to Compel Defendants Paul Henson (Doc. No. 70) and Steven Gardiner (Doc. No. 71) to Produce Documents.

With respect to each of the six requests to produce directed to each of them, Defendants Henson and Gardiner have, through counsel, answered "This Defendant does not possess any of the requested documents. Please see Defendant Montgomery County Sheriff's Office's Response to Request for Production of Documents." Plaintiff interprets these responses as refusals to produce the described documents, but the Magistrate Judge reads them as affirmative representations that neither of these Defendants has any of the described documents. The Court is uncertain how to interpret the second sentence of each of the responses and Plaintiff has not attached a copy of the referenced document. In any event, the responses appear to be complete in themselves. If these Defendants do not have any of the documents referred to, they cannot be compelled to produce them. If Plaintiff has good cause to believe that either Defendant has any of the referenced documents, he should submit that evidence to the Court in a renewed motion.

Both Motions to Compel are denied.

December 20, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge